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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) <b>013217.0177PTUS (401043-A-01-US)</b>	
		Application Number <b>10/028004-Conf. #2388</b>	Filed <b>December 21, 2001</b>
		First Named Inventor <b>Robert R. Gilman</b>	
		Art Unit <b>2134</b>	Examiner <b>T. M. Szymanski</b>
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s).          Note: No more than five (5) pages may be provided.</p>			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>28,300</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____		 Signature James M. Graziano Typed or printed name (303) 830-1778 Telephone number 30 MARCH 2006 Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			
<input type="checkbox"/> Total of <u>1</u> forms are submitted.			

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**ATTACHMENT TO PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Application Number	Filed	First Named Inventor	Group Art Unit	Examiner
10/028004 Conf. #2388	12/21/2001	Robert R. Gilman	2134	T.M. Szymanski

In the Advisory Action dated 28 February 2006, the Examiner remarks:

The Applicant's arguments against specific elements within the prior art used the 102 and 103 rejections fail to address the claim language of the application and instead argue points of the specification and present a piecemeal analysis of the claimed prior art without presenting new arguments over those addressed in the final rejection; therefore, without amendments to the claims to overcome the previously presented rejection the application is not in condition for allowance and the rejection is maintained.

However, the Examiner, in the Final Rejection dated 30 November 2005, asserted the newly cited Ho patent in an obviousness rejection under 35 USC §103(a), arguing that:

Chang et al ("Chang") has taught the method of authentication as in the claimed invention, but fails to teach the implementation of an owner key that is unique to the given computer system.

Ho et al. ("Ho"), however teaches the use of a key specific to the individual computer system for the purposes of license integrity.

In response to the newly cited Ho Patent, Applicants compared the teachings of the Ho Patent to Applicants' claim 1 as follows:

Therefore, the Ho patent specifically rejects the combination noted by the Examiner, since the use of a computer-specific encoding is impractical. Instead, the Ho patent relies on the fact that the target type of software is Internet Appliance where "The Internet Appliances typically consist of computer hardware with embedded software. The hardware includes a storage medium and a network interface card." Thus, the Ho patent relies on the software to be distributed as part of the hardware of the Internet Appliance and does not envision transmission of programs over a network to the end user computer.

In contrast, Applicants' secure data authentication apparatus makes use of a file transmission protocol where "the software file having a first signature appended to the software file", and the

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user's "computer system is assigned an owner key that is unique to said computer system." The hash value is computed "by processing at least some of said software file using a selected hash function, which source hash value is encrypted using said owner key to produce said first signature." Thus, when the user's computer receives the software file and the associated digital signature, it can recompute the digital signature and compare it to the received digital signature. Thus, Applicants' independent claim 1 recites structure that is not shown or suggested by the cited references, since the Ho patent specifically teaches away from the combination suggested by the Examiner.

In order to clarify the claimed elements not shown or suggested by the cited Ho Patent (or the Change Patent), Applicants have underlined the specific passages in claim 1 that correspond to the above-noted arguments:

A secure data authentication apparatus to authenticate a software file, the software file having a first signature appended to the software file, for use on a computer system, wherein said computer system is assigned an owner key that is unique to said computer system, said first signature comprising a source hash value that is computed by processing at least some of said software file using a selected hash function, which source hash value is encrypted using said owner key to produce said first signature, the apparatus comprising:

a secure processing device within the computer system to receive the software file and hash the software file using said selected hash function to produce a first hash value; and

a first key located within the secure processing device, which first key comprises said owner key wherein the secure processing device encrypts the first hash value with the first key to generate a second signature and compares the first signature with the second signature, and if the first signature matches the second signature, the computer system accepts the software file as being authenticated.

Applicants believe that the specific claim language is addressed, rather than the specification, and it is not clear what, if any, amendments to the claims are appropriate, since the Examiner has not addressed Applicants' arguments with respect to the newly cited Ho Patent. If the Examiner were to address these arguments, Applicants would be in a position to assess whether amendments to the claims are warranted.